

REMARKS

In the Office Action, the Examiner rejected claims 30-36 under 35 U.S.C. § 103(a) as being unpatentable in view of "Multiservice Tactics, Techniques, and Procedures For Nuclear Biological, and Chemical Aspects of Consequence Management (FM 3-11-21), Appendix C, Decontamination Tactics, Techniques, and Procedures" (Appendix C).

By this amendment, Applicants amend claims 30 and 36 and add new dependent claims 37 and 38. Applicants amend independent claim 30 to clarify the claim's preamble, but do not change the scope of the claim.

Applicants respectfully traverse the rejection claims 30-36 under 35 U.S.C. § 103(a). Appendix C is not prior art against this patent application.

In the PTO Form 892 attached to the Office Action, the Examiner alleges that Appendix C published in December 2001. However, there is no evidence that Appendix C, as cited by the Examiner, was available to the public prior to the filing date of this patent application. The copy of Appendix C provided by the Office does not include any mention of December 2001. In addition, the footer of the copy provided by the Office reflects an Internet access date of May 10, 2007 and shows a URL different from the URL listed on the PTO Form 892. The earliest available publication date of the copy of Appendix C provided by the Office is thus May 10, 2007, long after this application was filed. See Norian Corp. v. Stryker Corp., 363 F.3d 1321, 1330 (Fed. Cir. 2004) (" . . . the lack of substantial evidence of actual availability of the Abstract adequately supports the court's conclusion that dissemination of the Abstract was not established.")

In addition, the last page of the copy of Appendix C provided by the Office states:

In view of this admission, Appendix C, as relied on by the Examiner, was not publicly available prior to the filing of this patent application and is not available as prior art against this patent application. See Application of Bayer, 568 F.2d 1357, 1359 (C.C.P.A. 1978) (" . . . in determining whether a printed document constitutes a publication . . . the touchstone is public accessibility.")

Applicants therefore request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of claims 30-38.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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By: 

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